

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

EUSEVIO CHAVALLO, JR.,

Defendant.

NO: 2:13-CR-100-RMP

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF THE COURT'S JULY 7, 2016,
ORDER

BEFORE THE COURT is Defendant's pro se Motion for Reconsideration of the Court's July 7, 2016 Order, ECF No. 169. The Court has reviewed the motion, the record, and is fully informed.

ANALYSIS

Defendant's motion for reconsideration did not cite which law or rule he relies upon, but the Court construed it as one brought pursuant to the Federal Rules of Civil Procedure 59(e) and 60(b). "While Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an 'extraordinary remedy, to be used

sparingly in the interests of finality and conservation of judicial resources.’” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (quoting 12 James Wm. Moore et al., *Moore’s Federal Practice* § 59.30[4] (3d ed. 2000)). “Indeed, ‘a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.’” *Carroll*, 342 F.3d at 945 (quoting *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).

Similarly, Rule 60(b) permits “reconsideration only upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) ‘extraordinary circumstances’ which would justify relief.” *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991) (citing FED. R. CIV. P. 60(b) and *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985)).

A Rule 59(e) motion must be filed no later than twenty-eight (28) days following entry of the final judgment. *See* FED. R. CIV. P. 59(e). A motion for reconsideration is treated as a Rule 59(e) motion if it is timely filed within the specified twenty-eight-day period. *See Am. Ironworkers & Erectors Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001) [citing the former 10-day period]. Otherwise, the motion is treated as a Rule 60(b) motion for relief from judgment or order. *See id.*

Blackmon v. New Albertson’s Inc., No. 2:10-CV-00712-KJD, 2012 WL 3613956, at

*1 (D. Nev. Aug. 21, 2012).

1 The Court denied Defendant's petition on July 7, 2016, and Defendant filed
2 this present motion for reconsideration on July 26, 2016. Therefore, the motion shall
3 be treated as if it were brought pursuant to Rule 59(e).

4 Defendant's motion raises a number of related points as he argues: (1) that the
5 Court was mistaken in stating that a warrant existed for the search of Defendant's
6 truck because a warrant numbered MJ-13-256-00 was for the "Person of Eusevio
7 Chavallo Jr."; (2) that a second search warrant, MJ-13-274-00 authorized a search of
8 a residence and outbuilding, and did not authorize the search of Defendant's truck or
9 anything within it or its bed, (3) that the Court was mistaken in referring to the
10 container in the bed of Defendant's truck as a "trunk" rather than a "locked metal tool
11 box"; and (4) that the Court was incorrect in stating:

12 If Defendant were to withdraw his plea, and subsequently be convicted
13 of only the charge[s] for which he is currently serving a sentence,
14 Defendant would potentially face a sentence that is more than twice his
15 current sentence of 78 months. Additionally, the Government would
16 be able to reinstate other charges and would no longer be bound to
17 recommend a sentence below the guideline range.

18 ECF No. 169 at 1 (quoting ECF No. 165 at 7). Defendant argues that he cannot be
19 punished for "exercising his constitutional right to file a 2255 Petitioner [sic]." ECF
20 169 at 1.

Defendant also raises a fifth claim that repeats his other arguments as he argues
that the Court erred in denying him an evidentiary hearing to force the Government to
justify its allegedly illegal search, to allow Defendant to argue that there was never a

1 search warrant that authorized the search of his truck or the “locked metal toolbox” in
2 it, and to argue that his plea agreement was based on illegally seized evidence. *Id.* at
3 2.

4 Defendant’s arguments do not allege newly discovered evidence or an
5 intervening change in the controlling law, so the Court will assess his arguments to
6 determine if he has properly asserted clear error in the Court’s prior Order.

7 As stated in the prior Order, the Court reviewed a search warrant authorizing
8 the search of Defendant’s truck. ECF No. 165 at 4-5. Defendant’s providing copies
9 of other search warrants does nothing to vitiate the validity of the Court’s review of
10 the warrant pertaining to Defendant’s truck. More importantly, the Court previously
11 stated:

12 Although evidence supports the validity of the search, the Court need
13 not conduct an analysis of whether the search complied with the Fourth
14 Amendment, because Defendant expressly waived his right to pursue
such arguments based on facts that he knew at the time he signed the
Plea Agreement.

15 ECF No. 165 at 5. The Court was referring to Defendant’s Plea Agreement, which
16 stated in relevant part that:

17 Defendant further expressly waives his right to file any post-conviction
18 motion attacking his conviction and sentence, including a motion
19 pursuant to 28 U.S.C. § 2255, except one based on ineffective
20 assistance of counsel based on information not now known by
Defendant and which, in the exercise of due diligence, could not be
known by Defendant by the time the Court imposes sentence.

1 ECF No. 94 at 16. The Court explained that Defendant's own arguments state that he
2 had planned to challenge the validity of the search prior to pleading guilty but opted
3 to plead guilty rather than pursue such arguments at trial. *See* ECF No. 165 at 5.
4 Considering the Court's finding of a valid waiver, Defendant's first three arguments
5 which pertain to the search of his truck or the "locked metal tool box" are no longer
6 relevant. Therefore, these arguments fail to state any clear error by the Court.

7 Defendant also argues that he cannot be "punish[ed]" if the Court allows him
8 to withdraw his plea or if the Court suppresses evidence. ECF No. 169 at 1.
9 Defendant's argument does not challenge the basis for the Court's prior denial of his
10 petition, and therefore, fails to show any clear error. For Defendant's edification, the
11 Court clarifies the nature of a plea agreement: Defendant waived his rights to proceed
12 to trial and to challenge the evidence against him in exchange for the benefit of a
13 sentence that was less than half what he could have faced had he gone to trial. Even
14 if there was a basis for the Court to void his contract and allow him to withdraw from
15 his guilty plea he would have the right to proceed to trial, but with that opportunity,
16 would come the risk of a much higher sentence and additional charges because the
17 Government would no longer be constrained by a plea agreement that was set aside at
18 Defendant's request.

19 Defendant's final argument alleges that the Court erred by denying his motion
20 for an evidentiary hearing, but does not articulate a basis to find clear error aside

1 from the arguments addressed above. The Court previously denied the motion for a
2 hearing because it “found no viable legal basis for Defendant’s petition” ECF
3 No. 168 at 1. Defendant’s arguments regarding search warrants, a lack of a response
4 from the Government, and how his “plea agreement was based upon illegally seized
5 evidence,” fail to demonstrate clear error.

6 The Court finds that Defendant has not presented the Court with newly
7 discovered evidence, demonstrated clear error, and has failed to provide any
8 intervening change in controlling law. Therefore, the Court has no basis to
9 reconsider its prior denial of Defendant’s petition.

10 Accordingly, **IT IS HEREBY ORDERED** that Defendant’s Motion for
11 Reconsideration of the Court’s July 7, 2016 Order, **ECF No. 169**, is **DENIED**.

12 The District Court clerk is directed to enter this order and provide copies to
13 counsel and to pro se Defendant.

14 Dated this 11th day of October, 2016.

15
16 *s/ Rosanna Malouf Peterson*
ROSANNA MALOUF PETERSON
17 United States District Judge
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